

CRIMINAL PROCEDURE

CHAPTER SEVEN

BAIL

Section 701. Release in Nonbanishment Cases Prior to Trial

(a) Any person charged with an offense, other than an offense punishable by banishment, shall, at his appearance before a Judge or Magistrate of the Court, be ordered released pending trial on his personal recognizance or upon execution of an unsecured appearance bond in an amount specified by such judicial officer subject to the condition that such person shall not attempt to influence, injure, tamper with or retaliate against an officer, juror, witness, informant, or victim or violate any other law, unless the judicial officer determines in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required.

When such determination is made, the judicial officer shall, either in lieu of or in addition to release on personal recognizance or execution of an unsecured appearance bond, impose one or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed 10 percentum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hour.

(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at Court proceedings or of flight to avoid prosecution or failure to appear at Court proceedings.

(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

(d) A person for whom conditions of release are imposed and who after seventy-two hours from the time of the release hearing continues to be detained as a result of his inability to

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meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer of the Court may review such conditions.

(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: Provided, That, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the Court, nor to prevent the Court by rule from authorizing and establishing a Policeman's Bail Schedule for certain offenses or classes of offenses through which a person arrested may post bail with the Chief of the Tribal Police for transmittal to the Court Clerk and obtain his release prior to his appearance before a Judicial officer.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 702. Appeal From Conditions of Release

(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to Section 701(d) or Section 701(e) by a Magistrate of the Court, may move the Court to amend the order and have such motion determined by a Judge of the Court. Said motion will be determined promptly.

(b) In any case in which a person is detained after (1) a Judge of the Tribal Court denies a motion, under subsection (a) above, to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a Judge of the Tribal District Court, an appeal may be taken to the Supreme Court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If an order is not so supported, the Supreme Court may remand the case for further hearing, or may, with or without additional evidence, order the person released pursuant to Section 701 upon such conditions as the Supreme Court determines to be proper. This appeal shall be determined promptly.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

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Section 703. Release in Banishment Cases or After Conviction

A person (1) who is charged with an offense punishable by banishment or (2) who has been convicted of an offense and is either awaiting sentence or has filed an appeal, shall be treated in accordance with the provisions of Section 701 unless the Court or Judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of Section 702 shall not apply to persons described in this Section.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 704. Penalties for Failure to Appear

Whoever, having been released pursuant to this Chapter willfully fails to appear before the Court or a judicial officer as required, shall incur a forfeiture of any security which was given or pledged for his release, and in addition, shall, (1) if he was released in connection with a charge having banishment as a possible punishment, or while awaiting sentence or pending appeal after conviction of any offense having had banishment imposed as a part of the sentence, be subject to a fine of \$500.00 and imprisonment for a term of six months, and if banishment is imposed, one year shall be added to the term of banishment otherwise imposed, or (2) if he was released in connection with a charge other than as described, in (1) above, he shall be fined not more than the maximum provided for the offense charged or imprisoned for not more than six (6) months or both, or (3) if he was released for appearance as a material witness, shall be fined not more than Two Hundred Fifty Dollars (\$250.00) or imprisoned for not more than three (3) months or both.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 705. Persons or Classes Prohibited as Bondsmen

The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond; jailers, police officers, magistrates, judges, court clerks and any person having the power to arrest or having anything to do with the control of Tribal prisoners.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 706. Authority to Act as Bail Bondsmen

Any person authorized to act as bail bondsmen or runners in the federal or state courts shall be qualified to act as bondsmen and runners in the Tribal Court, and shall be liable to the same obligations as in their licensing jurisdiction and comply with all orders and rules of the Supreme Court and District Court.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]